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INTERSTATE COMMERCE COMMISSION

Conditional Sale Agreement No. 45

Dated as of July 20, 1971

BETWEEN

MANUFACTURERS NATIONAL BANK OF DETROIT

AND

DETROIT, TOLEDO AND IRONTON
RAILROAD COMPANY

INTERSTATE
COMMERCE COMMISSION
RECEIVED

JUL 23 1971

ADMINISTRATIVE SERVICES
MAIL BRANCH

FOR PURCHASE OF 8 DIESEL-ELECTRIC
LOCOMOTIVES

Conditional Sale Agreement No. 45

THIS AGREEMENT, made as of the 20th day of July, 1971, by and between MANUFACTURERS NATIONAL BANK OF DETROIT, a national banking association of Detroit, Michigan (hereinafter sometimes called "Vendor"), party of the first part, and DETROIT, TOLEDO AND IRONTON RAILROAD COMPANY, a Delaware corporation, with an office in the City of Dearborn, Michigan (hereinafter sometimes called "Vendee"), party of the second part.

WITNESSETH:

WHEREAS, by Agreement between General Motors Corporation, a Delaware corporation (Electro-Motive Division) (hereinafter called "Builder"), said Agreement being hereinafter referred to as "Contract" and being comprised of: (a) Builder's Proposal 70-L-9 (Revision "A" January 6, 1971) signed by Builder on December 15, 1970; (b) Vendee's Purchase Order dated May 11, 1971, bearing No. A78378; (c) Builder's Proposal 70-L-7 (Revision "A" January 6, 1971) signed by Builder on December 15, 1970; (d) Vendee's Purchase Order dated May 11, 1971, bearing number A78377; Builder has agreed to construct, sell, and deliver and Vendee has agreed to purchase six (6) new 2,000 h.p. Model GP 38 AC Diesel Electric Freight Locomotives numbered 215-220, inclusive, and two (2) 2,000 h.p. Model SD38 Diesel Electric Freight Locomotives numbered 253 and 254 (said locomotives being hereinafter sometimes called the "Equipment" or the "Locomotives"); and

WHEREAS, Vendee has requested Vendor, as its designee, to take title to the Equipment directly from the Builder, pay the purchase price therefor pursuant to the Contract, and thereupon sell the Equipment to Vendee pursuant to the terms thereof; to facilitate said request Vendee hereby assigns, transfers and sets over to Vendor all of its right, title and interest in and to the Contract; provided, however, that Vendee is relieved of and discharged from its obligations to Builder under the contract only to the extent such obligations are fulfilled by Vendee pursuant to this assignment and the provisions of this conditional sale agreement.

NOW, THEREFORE, in consideration of the mutual promises of the parties hereto, hereinafter set forth, the parties hereto agree as follows:

1. ACQUISITION OF EQUIPMENT BY VENDOR

1.1 Vendor agrees to accept a transfer of title from Builder and pay the purchase price provided in the Contract; provided, however, that Vendor's obligation hereunder shall in no event extend further than the payment by Vendor to the Builder of the purchase price for said Equipment not exceeding the aggregate sum of One Million Six Hundred Fifty Thousand Dollars (\$1,650,000.00) and acceptance of the Bill of Sale as herein provided; and Vendor shall not be bound to perform or answer for any other obligation, liability or duty required by or arising out of the Contract and, furthermore, that Vendor's obligation to purchase and pay for the Equipment is subject to the fulfillment to its satisfaction, prior to or at the closing of the following conditions:

- (a) Builder shall have executed and delivered to Vendor Builder's Bill of Sale, identical in sub-

stance and similiar in form to that annexed hereto as Exhibit "A".

- (b) Builder shall have delivered to Vendor its invoice or invoices pursuant to the Contract showing thereon that the final purchase price does not exceed One Million Eight Hundred Twenty-seven Thousand Dollars (\$1,827,000.00) in aggregate amount.
- (c) Vendee shall have delivered to Vendor a duplicate original of its Certificate of Acceptance of the Equipment.
- (d) Vendor shall have received evidence satisfactory in extent and form to Vendor and to Vendor's counsel that execution and delivery of the Bill of Sale has been duly authorized.
- (e) Vendor shall have received from counsel for the Vendee an opinion satisfactory in extent and form to Vendor and to Vendor's counsel with respect to the legal matters referred to in Section 3.1 through 3.5 hereof.
- (f) This Agreement shall have been filed and recorded with the Interstate Commerce Commission in accordance with Section 20(c) of the Interstate Commerce Act.

2. CONDITIONAL SALE BY VENDOR TO VENDEE

2.1 Upon completion of the transfer of title to Vendor and payment to Builder contemplated in Section 1 hereof, Vendor will sell to Vendee and Vendee will purchase from the Vendor the Equipment, subject to the terms and conditions of this Agreement. Sale by Vendor shall be

without warranties or representations of any sort, except Vendor warrants to the Vendee that it has not heretofore done, committed or willingly suffered to be done or committed, any act or thing whatsoever, whereby the Equipment is or shall be charged or encumbered in title or otherwise whatsoever. Vendee has possession of the Equipment and Vendee's delivery to Vendor of an executed counterpart of its Certificate of Acceptance constitutes conclusive evidence that the Equipment has been accepted and is held by the Vendee, subject to the terms and conditions of this Agreement. Vendor shall retain full legal title to and property in all said Locomotives until Vendee shall have made all the payments and shall have performed all of the covenants in this Agreement provided to be made, kept or performed by Vendee, notwithstanding the delivery of the Locomotives to and the possession and use thereof by Vendee as herein provided. Any and all replacement of parts of the Locomotives or additional equipment or facilities installed thereon or therein shall constitute accessions to the Locomotives the title to which shall be immediately vested in Vendor, and which shall be subject to all the terms, reservations and conditions of this Agreement. When Vendee shall have paid in full the entire purchase price for all of said Locomotives, with interest thereon, and all other payments herein provided to be made by Vendee with respect thereto, title to and property in each and all said Locomotives shall pass to Vendee without further transfer or act on the part of the Vendor, but Vendor will, if requested by Vendee to do so, execute and deliver to Vendee a Bill of Sale or other instruments of conveyance of the Locomotives; and warranty of title to the Locomotives in such Bill of Sale or other instruments of conveyance thereof

shall be only against the acts and deeds of the Vendor. To the extent permitted by applicable law, Vendee hereby waives any and all rights to the payment of any fines or penalties for failure of Vendor to comply with any applicable statute with respect to evidencing satisfaction of this Conditional Sale Agreement, except for failure to do so within a reasonable time after written demand by Vendee.

2.2 Vendee hereby acknowledges itself to be indebted to the Vendor, and hereby promises to pay to the Vendor at such place as the Vendor may designate, the sum of One Million Six Hundred Fifty Thousand Dollars (\$1,650,000.00).

2.3 The Vendee agrees to pay to Vendor on the closing date, hereinafter referred to as a down payment, the amount in excess of One Million Six Hundred Fifty Thousand Dollars (\$1,650,000.00). In the event the purchase price due to changes in specifications is increased, the balance due after application of said amount will be One Million Six Hundred Fifty Thousand Dollars (\$1,650,000.00) as herein provided.

2.4 Payment of the balance of the purchase price for the Locomotives, in amount One Million Six Hundred Fifty Thousand Dollars (\$1,650,000.00) and of interest thereon from the closing date at seven and one-half per cent ($7\frac{1}{2}\%$) per annum on the diminishing unpaid balances of the purchase price remaining unpaid since the last preceding instalment payment date, shall be made by Vendee in quarter-annual instalment payments, beginning on the 15th day of October, 1971, and continuing until the full purchase price is paid, in accordance with the Schedule of Payments hereinafter set forth which is annexed hereto as Exhibit "B". Said instalments shall be

allocated first to interest and the balance to principal until the full purchase price is paid. Commencing with the instalment payment due October 15, 1974, and upon each quarterly instalment due date thereafter, Vendee shall have the right to pay the then remaining total unpaid principal balance providing Vendee has given Vendor thirty (30) days' notice of intent to so prepay said outstanding balance. Vendor has a right to refuse said prepayment if Vendee is making said prepayment from a refinancing institution.

2.5 Until and unless payments shall be made by Vendee under Sections 4.3 or 4.4, the quarter-annual instalment payment shall be applied in accordance with the Schedule of Payments annexed hereto as Exhibit "B"; provided that the interest due on October 15, 1971, shall be computed at the rate of Seven and one-half (7-1/2%) per cent per annum from the "Closing Date" to but not including October 15, 1971.

2.6 All moneys received by the Vendor under Section 4.2 and 4.4 hereof and applicable to the reduction of the principal shall be applied to the payment of instalments of principal in the inverse order of their maturity. The amount of the instalment payments allocated to principal maturing subsequent to each such application shall not be decreased, but the amount of each such subsequent instalment allocated to interest shall be decreased. If, after applying as aforesaid the sums of money realized by Vendor, there shall remain a surplus in the possession of Vendor, such surplus shall be paid to Vendee.

2.7 The term "Closing Date" as used herein shall mean such date, not more than ten (10) business days following presentation by Builder to Vendor of the Bill of Sale and

invoice provided in Section 1.1 (a) and (b) herein, as shall be fixed by Vendee by written notice delivered to Vendor at least three (3) business days prior to the Closing Date designated therein. The term "business days" as used herein means calendar days, excluding Saturdays, Sundays and holidays. It is understood that the Closing Date shall be fixed not later than August 20, 1971.

2.8 The Vendee will pay, to the extent legally enforceable, interest at the rate of nine per cent (9%) per annum upon all amounts remaining unpaid after the same shall have become due and payable pursuant to the terms hereof, anything herein to the contrary notwithstanding.

2.9 All payments by Vendee hereunder shall be free of expense to Vendor for collection or other charges, and no deduction shall be made therefrom of the amount of any manufacturer's sales or use tax or taxes (including any increase therein) imposed by Federal, State, Municipal or other Governmental authority upon the manufacture and/or sale and/or use of the Locomotive, all of which expenses and taxes Vendee assumes and agrees to pay or reimburse Vendor for in addition to the above-mentioned purchase price of the Locomotives.

2.10 Vendee shall, in addition, pay promptly all taxes, assessments and governmental charges which from time to time after delivery may be imposed upon the Locomotives, or the earnings arising therefrom, or the operation thereof, or upon Vendor by reason of its ownership thereof, by any government or any country, state or political subdivision thereof, in which the Locomotives may be located, or which shall have jurisdiction over the Locomotives or any part of them, and Vendee agrees at all times to keep the Locomotives free and clear of all tax

liens and encumbrances; provided, however, that Vendee shall not be required to pay any tax, assessment or other governmental charge, the validity of which Vendee shall contest in good faith and by appropriate legal proceedings, until such contest shall have been decided, if the non-payment thereof does not, in the judgment of Vendor expressed by written notice to Vendee, materially and adversely affect its rights and interests in the locomotives.

2.11 All payments provided for in this Agreement shall be made by Vendee to Vendor in such currency of the United States of America as at the time of payment is legal tender for payments of public and private debts.

3. REPRESENTATIONS AND WARRANTIES

The Vendor represents and warrants that the execution of this Agreement is within its corporate authority and has been authorized by proper corporate authority. The Vendee represents, warrants and covenants that:

3.1 The Vendee is a duly organized and validly existing corporation in good standing under the laws of the State of Delaware, and has the power and authority to own its properties and carry on its business as now conducted.

3.2 The execution and delivery of this Agreement is within its corporate authority, has been authorized by proper corporate proceedings and will not contravene any provision of law or of its charter, by-laws or any agreement or other instrument binding upon it, and the Agreement is a valid and binding obligation of the Vendee enforceable against the Vendee in accordance with its terms.

3.3 No governmental authorizations are required as to the Vendee for the execution and delivery of the Agree-

ment or for the validity and enforceability thereof or the conditional sale hereunder on the terms and conditions provided for herein; or, if any such authorizations are required, they have been obtained.

3.4 No litigation or administrative proceedings are pending or, to the knowledge of the Vendee, threatened against the Vendee, the adverse determination of which would affect the validity of this Agreement, the ability of the Vendee to fulfill its obligations hereunder, or the rights of the Vendor hereunder.

3.5 Upon delivery by Builder of the Bill of Sale described in Section 1.1(a) herein, Vendor shall thereby acquire full legal title to the Equipment and good and lawful right to sell each Locomotive and title to each Locomotive shall be vested in Vendor free of all claims, liens and encumbrances of any nature, subject only to the rights of Vendee under this Agreement, provided however, that as to the following matters, the warranties of Vendor in this Section 3.5 are limited to a warranty that Vendee does not have notice to the contrary thereof; that the Builder is a duly organized and validly existing corporation in good standing and has the power and authority to carry on its business as now conducted; that said Bill of Sale has been duly authorized and delivered by Builder, is a valid instrument, binding upon Builder in accordance with its terms, and will not contravene any provision of law or its charter, by-laws or other agreement or other instrument; that Builder has not made or suffered any transfer of title to, or permitted any claim, lien or encumbrance against the Equipment; and that Vendor is vested with all the right, title and interest of Builder in the Equipment.

3.6 Vendee has possession of the Equipment, has accepted the same, and the said Locomotives conform to all Interstate Commerce Commission requirements and specifications interpreted as being applicable to railroad locomotives of the character of such Locomotives and the Equipment is free from defects in material and workmanship and is in good and serviceable condition.

4. AFFIRMATIVE COVENANTS

4.1 The Vendee agrees that so long as any amount of the purchase price is outstanding hereunder, it will furnish Vendor: (a) within ninety (90) days after and as of the end of each calendar year, and more often if requested, a report as to the condition of the Locomotives; (the Vendor shall have the right, but shall be under no obligation, to inspect the Locomotives at any reasonable time or times during the continuance of this Agreement); and (b) within ninety (90) days after and as of the end of each Vendee's fiscal years a detailed balance sheet, statement of profit and loss, statement of account, surplus account, and statement of operating income and expense accounts, certified by an authorized officer of the Vendee, in form substantially the same as Vendee's Annual Report for the year ending December 31, 1970, a copy of which has been previously furnished to Vendor.

4.2 Vendee shall comply in all respects with all laws of any country, the United States and of the States and political subdivisions thereof, in or through which the said Locomotives may be operated, covering the use, operation and maintenance of said Locomotives, and with the lawful rules with respect to said Locomotives of the Interstate Commerce Commission, and of every other legislative, administrative or judicial body exercising any power or

jurisdiction over said Locomotives; and in the event that the said laws or rules require any alterations of any of said Locomotives, or any additional equipment or appliances thereon, Vendee shall conform therewith at its own expense and shall maintain said Locomotives in proper condition for operation under such laws and rules during the life of this Agreement.

4.3 At all times while this Agreement is in force, Vendee, at his own expense shall keep the said Locomotives adequately insured against damage or destruction by fire, while on its own lines or on lines over which it operates, in an insurance company or companies approved by Vendor. The policies shall specify that all payments of loss on said Locomotives shall be made to Vendor. The policies of insurance, certified copies thereof, or certificates of coverage satisfactory to Vendor, shall be deposited with Vendor. In case Vendee shall fail to keep such Locomotives so insured and to deposit policies, certified copies thereof or certificates of coverage as aforesaid, Vendor may itself insure such Locomotives, and in this event Vendee shall be obligated to repay to Vendor the amounts of premiums paid therefor with interest thereon at the rate of seven and one-half per cent (7-1/2%) per annum from the time of notice of Vendee of such premium payment until repaid, which notice to Vendee shall be made by delivering to Vendee a certified copy of such policy or policies of insurance, or certificates of coverage giving the terms of coverage of such policies in reasonable detail. All insurance moneys shall be paid to Vendor and shall be applied by Vendor on the next ensuing quarter-annual instalment payment date to the reduction of the principal in accordance with the provisions of Section 2.6 herein, unless on or before said next ensuing instalment payment

date Vendee shall have given notice to the Vendor that Vendee intends to repair or that it has repaired the Locomotive or Locomotives in respect of which such insurance moneys were paid. If such notice shall be given, said moneys shall, upon satisfactory evidence of the repair of such Locomotives, be paid over to Vendee. If such evidence of repair shall not be given within a reasonable period after the giving of such notice, then Vendor shall apply such moneys to the reduction of principal in accordance with the provisions of Section 2.6 herein.

4.4 Vendee at its own cost shall keep all said Locomotives in good condition and proper running order, and in case any Locomotives shall be worn out, lost, destroyed, irreparably damaged or otherwise rendered permanently unfit for use from any cause whatsoever prior to the payment of the full indebtedness in respect of the purchase price of the Locomotives, together with interest thereon and all other payments required hereby, the Vendee shall, within twenty (20) days of such event, fully inform the Vendor in regard to such destruction or damage and shall, within thirty (30) days of any such event, pay to the Vendor a sum (less any moneys received pursuant to Section 4.3) equal to the fair value as in good repair of the Locomotive or Locomotives so damaged or otherwise rendered permanently unfit for use. For the purpose of this Section 4.4, the fair value of any Locomotive as in good repair shall be deemed to be the original cost thereof less an amount representing depreciation arising from reasonable wear and tear to be determined by the method in use at the time in standard railroad practice for determining such depreciation, but in no event exceeding 1/15th of said original cost for each full twelve (12) month period elapsed from the date of delivery and acceptance thereof.

hereunder to the date as of which such fair value is to be determined, as evidenced by a certificate signed by an officer of the Vendee and delivered to the Vendor. If Vendee shall have received or shall receive from another source compensation for the destruction of such Locomotives in excess of such fair value, Vendee shall pay such excess to Vendor when received. All moneys paid by Vendee to Vendor under this Section 4.4 shall be applied to reduction of principal in accordance with the provisions of Section 2.6 herein.

4.5 Vendee has fastened, and will always cause to be kept fastened, upon each side of each Locomotive a metal plate or stenciling bearing the following words in letters not less than one inch in height: "Manufacturers National Bank of Detroit, Owner". Such plates or stenciling will be so located as to be readily visible and to indicate plainly ownership of said Locomotives. In case, during the continuance of this Agreement, such plates, stenciling or markings shall at any time be removed, defaced or destroyed, Vendee shall immediately at its own cost, cause the same to be restored or replaced; and if by reason of change of law or otherwise additional or other plates or markings shall be required to protect the interest of the owner, Vendee shall provide and install and thereafter maintain the same on all such Locomotives. The Locomotives may be lettered "Detroit, Toledo and Ironton Railroad Company", "D. T. & I." or in some other appropriate manner, as Vendee may desire, and may be numbered for convenience in identification; but Vendee, during the continuance of this Agreement, will not allow the name of any corporation or other party to be placed on any of the Locomotives, in such manner that such name or designation might be interpreted as a claim of ownership thereof

by any person, association or corporation other than Vendor or its assignee. In case Vendee shall change the number assigned to or placed on any Locomotive, immediate notice of such change shall be given to Vendor so that it may correct its records accordingly. In the event, subsequent to entering into this Agreement, of a transfer or assignment, or successive transfers or assignments, by Vendor or its assignee of title to said Locomotives (and of Vendor's rights hereunder in respect thereof), whenever requested by any such transferee or assignee, Vendee shall change the ownership plates on all the Locomotives to indicate the title of such transferee or assignee to such Locomotives and its succession to rights of Vendor hereunder, and the expense of making such change in plates shall be borne by the party or parties requesting such change, except only that the cost of making such change in connection with the first assignment by Vendor shall be borne by Vendee.

4.6 Vendee shall bear the risk of and shall not be released from its obligation hereunder in the event of any damage to or destruction or loss of any of the said Locomotives from any cause whatsoever. Vendee further agrees to save, indemnify and keep harmless Vendor from and against all loss, damages, injuries, claims, demands or expenses whatsoever, regardless of the cause thereof, in connection with any accident or otherwise arising from or caused by operation or use of said Locomotives while this agreement is in force. With respect to any loss, damages, injuries, claims, demands and expenses in connection with any such accident or otherwise arising from or caused by operation or use of said Locomotives while this Agreement is in force, such covenant of indemnity shall continue in full force and effect notwithstanding the full

payment of the purchase price and the conveyance of title to the Locomotives, as provided in Section 2.1 hereof, or the termination of this Agreement in any manner whatsoever. Vendee will pay or satisfy and discharge any and all sums claimed by any party by, through or under the Vendee or its successors or assigns, which, if unpaid, might become a lien or a charge upon the Locomotives, or any unit thereof, equal or superior to the title of Vendor thereto, but shall not be required to pay or discharge any such claim so long as the validity thereof shall be contested in good faith and by appropriate legal proceedings in any reasonable manner and the non-payment thereof does not, in the opinion of Vendor, adversely affect the property rights of Vendor hereunder.

4.7 Vendee agrees that, after delivery of the Locomotives, they will be kept, maintained and used by the Vendee solely upon the lines of railroad owned or controlled by it or over which it operates in the States of Michigan, Ohio, and Wisconsin, and the Province of Ontario, Canada, and will not be removed to any other State without consent in writing of the Vendor, except for Vendee's right to let the Equipment provided in Section 5 herein.

5. NEGATIVE COVENANTS

The Vendee covenants and agrees that so long as any amount of the purchase price is outstanding hereunder, it will not, without the prior written consent of Vendor, assign or transfer this Agreement or any of its rights hereunder, or transfer or let the said Locomotives or any of them, except Vendee may let any or all the Locomotives to The Ann Arbor Railroad Company, provided, however, that the said leasing permitted herein shall be subject to the provisions of this Agreement and the terms thereof

shall not require more than thirty (30) days' notice of termination thereof by Vendee, and shall not cause or permit any of said Locomotives to be pledged or held for any debt or obligation owing by Vendee or to be in any manner encumbered and shall not suffer the said Locomotives or any of them to pass out of Vendee's control, except for the said letting as provided in this Section 5.

6. DEFAULTS

6.1 In case the Vendee:

- (a) shall make default in the payment of any instalment provided in Section 2.2 through 2.11 inclusive, and shall remain in default for more than thirty (30) days after such payment shall become due and payable; or
- (b) shall default in the performance of any other obligation under this Agreement and such default shall continue for a period of thirty (30) days after written notice thereof has been given by Vendor to Vendee;

then in any such case (in this Agreement sometimes called events of default), Vendor at its option may by notice in writing delivered to Vendee declare to be due and payable forthwith the entire unpaid balance of the purchase price of the Locomotives; and thereupon the entire amount of such unpaid purchase price shall become and shall be due and payable immediately without further demand, together with interest thereon at the rate of seven and one-half per cent (7-1/2%) per annum to such date of default, and thereafter interest shall be payable by Vendee upon any portion thereof overdue, during such times as it shall remain overdue, at the rate of nine (9%)

per cent per anum, and Vendor shall thereupon be entitled to recover judgment for the entire amount so payable by Vendee with interest thereon at said rates and to collect such judgment out of any property of Vendee wherever situated. Any and all money so collected by Vendor shall be applied by it as hereinafter in Section 6.7 of this Agreement provided.

6.2 Vendee covenants that, in case of the happening of any such event of default, Vendor, by its agents may take or cause to be taken immediate possession of all or any one or more of the Locomotives wherever they may be situated, and may also remove the same from the use and possession of the Vendee, and for this purpose may enter upon the railroads and premises of Vendee and of any corporation a majority of whose capital stock is owned directly or indirectly by Vendee, and take possession of all or any part of the Locomotives and withdraw the same from said railroads and premises, retaining all payments which up to that time may have been made hereunder for the Locomotives and otherwise, and may lease the Locomotives or any part thereof, or, with or without retaking possession thereof (but only after making the declaration hereinabove provided for), may sell the same or any part thereof, so far as may be necessary to realize the balance remaining to be paid by Vendee under this Agreement free from any and all claims of Vendee at law or in equity, in one lot and as an entirety or in separate lots, at public or private sale, for cash or upon credit, in its discretion, and may otherwise proceed to enforce its rights in the manner provided by this Agreement. Any net proceeds from sale in excess of the balance remaining to be paid under this agreement, shall be paid to Vendee.

6.3 In case Vendor shall rightfully demand possession of the Locomotives in pursuance of this Agreement and shall reasonably designate a point or points upon the railroad of Vendee, or upon the railroad of any corporation a majority of whose capital stock is at the time directly or indirectly owned by Vendee, for the delivery of the Locomotives to it, Vendee shall, at its own expense, forthwith and in the usual manner cause the Locomotives to be moved to such point or points on said railroads as shall be designated by Vendor and shall there deliver the same or cause them to be delivered to Vendor; or at the option of Vendor, Vendor may keep the Locomotives on any of the lines of railroad or premises of Vendee until Vendor shall have leased, sold or otherwise disposed of the same, and for such purpose Vendee agrees to furnish without charge for rent or storage, the necessary facilities at any point or points selected by the Vendor reasonably convenient to Vendee. It is hereby expressly covenanted and agreed that the covenants in this Section 6.3 contained are of the essence of this Agreement and that, upon application to any court having jurisdiction in the premises, Vendor shall be entitled to a decree against Vendee requiring the specific performance thereof and the Vendee expressly consents to the entry of such a decree.

6.4 Any such sale or sales may be held or conducted at such place or places and at such time or times as Vendor may specify, or as may be required by law, and without gathering at the place of sale the Locomotives to be sold, and in general in such manner as Vendor may determine, but so that Vendee may and shall have a reasonable opportunity to bid at such sale.

6.5 Upon such taking possession or lease or sale of the Locomotives, Vendee shall cease to have any rights or

remedies in respect of the Locomotives under this Agreement, but all such rights and remedies shall be deemed thenceforth to have been waived and surrendered by Vendee, and no payments theretofore made by Vendee for the Locomotives or any of them shall, in case of the happening of any such event of default and such taking possession, lease or sale by Vendor, give to Vendee any legal or equitable interest or title in or to the Locomotives or any of them or any cause or right of action at law or in equity in respect to the Locomotives against Vendor. No such taking possession or lease or sale of the Locomotives by Vendor shall be a bar to the recovery by Vendor from Vendee of any unpaid balance of the purchase price of the Locomotives, and Vendee shall be and remain liable for the same, until such sums shall have been realized as, with the proceeds of the lease or sale of Locomotives, shall be sufficient for the discharge and payment in full of all sums payable by Vendee under any of the provisions of this Agreement.

6.6 Vendee will pay all reasonable expenses, including attorney's fees, incurred by Vendor in enforcing its remedies under the terms of this Agreement. In the event that Vendor shall bring any suit to enforce any of its rights hereunder and shall be entitled to judgment, then in such suit, Vendor may recover reasonable expenses, including attorney's fees, and the amount thereof shall be included in such judgment.

6.7 If in case of the happening of any such event of default, Vendor shall exercise any of the powers conferred upon it by this Agreement, all payments made by Vendee to Vendor under this Agreement after such event of default, and the proceeds of any judgment collected by

Vendor from Vendee hereunder, and the proceeds of every lease or sale by Vendor hereunder of any of the Locomotives, together with any other sums which may then be held by Vendor under any of the provisions of this Agreement, shall be applied by Vendor in the order of priority, viz: (a) to the payment of all proper expenses incurred or advances made by Vendor in accordance with the provisions of this Agreement, including the expense of any retaking of the whole or any part of the Locomotives and all expenses of the custody and of any lease or sale thereof, and (b) to the payment of all sums of money due and payable to Vendor under the provisions of this Agreement, including any taxes, assessments or governmental charges paid by or imposed upon Vendor in respect of the Locomotives. After all such payments shall have been made in full, the title to any of the Locomotives remaining unsold shall be conveyed by the Vendor to Vendee, free from any further liabilities or obligations to Vendor hereunder. If, after applying all of such sums of money realized by Vendor, as aforesaid, there shall remain any amount due to Vendor under the provisions of this Agreement, Vendee agrees to pay the amount of such deficit to Vendor. If, after applying, as aforesaid, the sums of money realized by Vendor, there shall remain a surplus in the possession of Vendor, such surplus shall be paid to Vendee.

6.8 The remedies in this Agreement provided in favor of Vendor shall not be deemed exclusive, but shall be cumulative, and shall be in addition to all other remedies in its favor existing at law or in equity.

6.9 The foregoing provisions, however, are subject to the condition that if at any time after unpaid balance of the purchase price shall have been declared due and pay-

able as provided in this Agreement, all arrears of instalment payments with interest as hereinabove provided and the expenses of Vendor and all other sums which shall have become due and payable by Vendee under this Agreement (other than the unpaid instalments which shall not at the time have matured according to their terms) shall be paid by Vendee before any lease or sale by Vendor of any of the Locomotives and every other default in the observance or performance of any covenant or condition of this Agreement shall be made good or secured to the satisfaction of Vendor, or provision deemed by Vendor to be adequate shall be made therefor, then and in every such case Vendor shall waive the default by reason of which the unpaid balance of the purchase price of the Locomotives shall have been declared and become due and payable and shall waive consequences of such default, but no such waiver shall extend to or affect any subsequent default or impair any right consequent thereon.

6.10 Neither such retaking possession nor any lease or sale of the Locomotives by Vendor, nor any action or failure or omission to act against Vendee in respect to the Locomotives on the part of Vendor, nor any delay or indulgence granted to Vendee by Vendor, shall affect the obligation of Vendee under this Agreement.

6.11 The filing by Vendee or by creditors of Vendee of any petition for reorganization or debt adjustment affecting the obligations of Vendee under this Agreement, under Section 77 of the Bankruptcy Act, or under any amendment or revision thereof, or under any other provision of the Bankruptcy Act as now or hereafter existing, or any voluntary assignment or transfer of Vendee's interest in and under this Agreement, or any involuntary

transfer of such interest by bankruptcy, or by the appointment of a receiver or trustee, or by execution, or by any judicial or administrative decree or process, or otherwise (unless such petition shall be dismissed or such assignment, transfer, decree, or process shall within forty-five (45) days from the filing or other effective date hereof, be nullified, stayed or otherwise rendered ineffective, but then only so long as such stay shall continue in force or such ineffectiveness shall continue, or unless any such receiver(s), or trustee(s) shall within forty-five (45) days from the date of his or their appointment assume all the obligations of Vendee under this Agreement in writing, pursuant to a court order or decree, in such manner that such obligations shall have the same status as obligations incurred by such receiver(s) or trustee(s)) shall be deemed a breach of this Agreement and a default hereunder; whereupon Vendor may elect to declare the unpaid balance of the purchase price immediately due and payable as hereinbefore provided and may thereupon forthwith retake possession of the Locomotives or any of them and exercise and enforce any and all other remedies as provided by Sections 6.1 to 6.10 hereof.

7. MISCELLANEOUS

7.1 Any provision of this Agreement prohibited by any applicable law of any state, or which by any applicable law of any state would convert this agreement into any instrument other than an Agreement of conditional sale, shall as to such state be ineffective, without modifying as to such state the remaining provisions of this Agreement. Where, however, the conflicting provisions of any applicable state law may be waived, they are hereby waived by Vendee to the full extent permitted by law.

7.2 Vendee shall cause this Agreement, any assignments and supplements thereof to be filed, registered and recorded in accordance with the terms of the Michigan Uniform Commercial Code and wherever else required for the proper protection, to the satisfaction of counsel for Vendor, or Vendor's title to the Locomotives, and its rights under this Agreement; and Vendee shall from time to time do and perform any other act, and will execute, acknowledge, deliver, file, register and record any and all further instruments, required by law or reasonably requested by Vendor for the purpose of such protection of its title and rights, or for the purpose of carrying out the intention of this Agreement; and Vendee will promptly furnish to Vendor evidence of such recording.

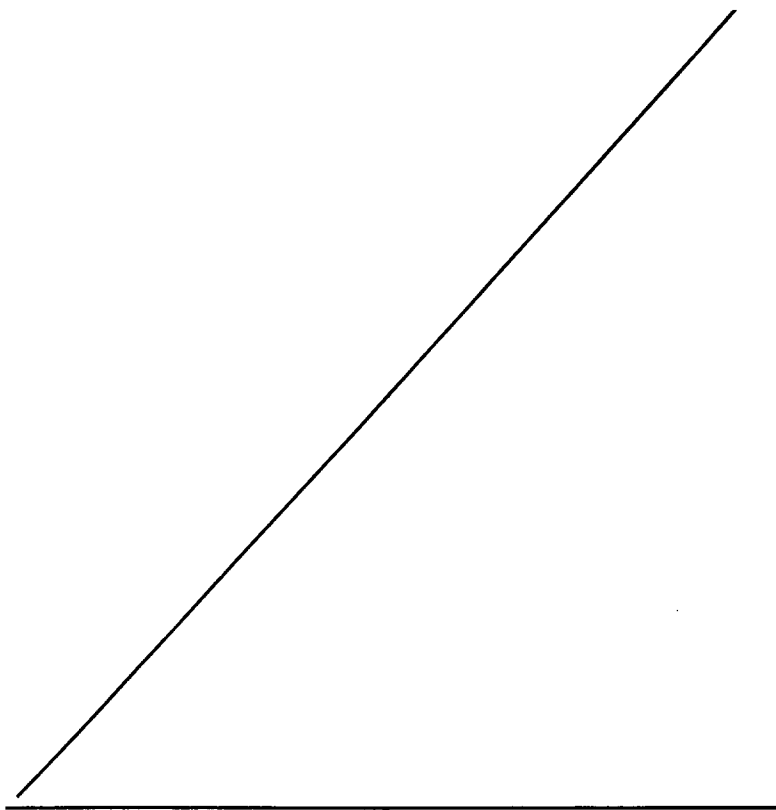
7.3 Vendee will pay all reasonable costs, charges, and expenses, except the counsel fees of Vendor, and including stamp and other taxes, if any, incident to the printing or other duplicating, execution, delivery, filing or recording of this Agreement, of the first assignment of this Agreement, of any instrument supplemental to or amendatory of this Agreement, and of any certificate of the payment in full of the indebtedness in respect of purchase price due hereunder.

7.4 This Agreement of conditional sale constitutes the entire contract between Vendee and Vendor; no variation or modification of this Agreement and no waiver of any of its provisions or conditions shall be valid unless in writing and signed by duly authorized officers of Vendee and Vendor.

7.5 The terms of this Agreement and all rights and obligations hereunder shall be governed by the laws of the State of Michigan.

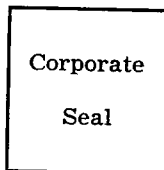
7.6 All or any of the rights of Vendor under this Agreement, including the right to receive the payments herein provided to be made by Vendee, may be assigned by Vendor and reassigned by any assignee at any time and from time to time, provided, however, that no such assignment shall relieve Vendee of its obligations under this Agreement. In event of any such assignment, the assignor shall give written notice to Vendee, together with a counterpart or copy of such assignment, stating the identity of and post office address of the assignee, and such assignee shall by virtue of such assignment acquire all of its assignor's right, title and interest in and to the Locomotives and each and every part thereof, subject only to such reservations as may be obtained in such assignment. From and after the receipt by Vendee of the notification of any such assignment, all payments thereafter to be made by Vendee hereunder shall, to the extent so assigned, be made to the assignee. All rights as to notices and consents shall pass with such assignment. Vendee will furnish any such assignee with all reasonable supporting paper specified in any such assignment.

7.7 Wherever provision is made in this Agreement for any notice or demand to or upon Vendee, or if at any time Vendor or any assignee shall desire to give notice to make demand upon Vendee, the same may be given or made by depositing a written statement thereof, enclosed in a post-paid envelope in any United States Post Office, directed to Vendee at its office or place of business in the City of Dearborn, Michigan, and an affidavit by any person depositing such notice in respect of such mailing shall be deemed to be and shall be conclusive evidence of the giving and receipt of such notice and the making of such demand.



WITNESS the due execution hereof.

DETROIT, TOLEDO AND IRONTON
RAILROAD COMPANY



By C. L. Towle
C. L. TOWLE
Its PRESIDENT

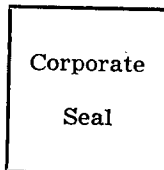
ATTEST:

By R. C. Courtney
R. C. COURTNEY
VICE PRESIDENT

In the presence of:

N. A. Nallen
N. A. NALLEN
R. Guregian
R. GUREGIAN

MANUFACTURERS NATIONAL
BANK OF DETROIT



By M. T. Monahan
M. T. MONAHAN
Its VICE PRESIDENT

ATTEST:

By Robert S. Crane
ROBERT S. CRANE
LEGAL OFFICER

In the presence of:

J. S. McDonald
J. S. McDONALD
Elizabeth Oliverio
ELIZABETH OLIVERIO

State of Michigan,
County of Wayne—ss.

On this 16th day of JULY, 1971,
before me personally appeared C. L. TOWLE
to me personally known who in my presence executed the
foregoing instrument on behalf of Detroit, Toledo and
Ironton Railroad Company on this date and who being by
me duly sworn, said that he is the PRESIDENT
..... of Detroit, Toledo and Ironton Railroad Company,
that one of the seals affixed to the foregoing instrument is
the corporate seal of said corporation, that said instrument
was signed and sealed on behalf of said corporation by
authority of its Board of Directors and he acknowledged
that the execution of the foregoing instrument was the
free act and deed of said corporation.

Louise K. White,
Notary Public,
Wayne County, Michigan.

My Commission Expires: LOUISE K. WHITE
Notary Public, Wayne County, Mich.
My Commission Expires Apr. 30, 1974

Notarial
Seal

State of Michigan,
County of Wayne—ss.

On this 19th day of JULY, 1971,
before me personally appeared MT. MONAHAN,
to me personally known, who in my presence executed the
foregoing instrument on behalf of Manufacturers National
Bank of Detroit on this date and who being by me duly
sworn said that he is the vice president of Manufacturers
National Bank of Detroit, that one of the seals affixed to
the foregoing instrument is the corporate seal of said cor-
poration, that said instrument was signed and sealed on
behalf of said corporation by authority of its Board of
Directors and he acknowledged that the execution of the
foregoing instrument was the free act and deed of said
corporation.

Thelma L. Wallace

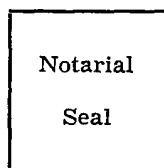
Notary Public,

Wayne County, Michigan

THELMA L. WALLACE

My Commission Expires: Notary Public, Wayne County, Mich.

My Commission Expires May 13, 1974



General Motors Corporation
Electro-Motive Division

ACKNOWLEDGMENT

General Motors Corporation, Electro-Motive Division (herein called "Builder") does hereby acknowledge receipt of Conditional Sale Agreement No. 45 dated as of July 20, 1971. General Motors Corporation, Electro-Motive Division hereby agrees to be bound by the provisions of Conditional Sale Agreement No. 45 insofar as they pertain to the obligations of Builder. General Motors Corporation, Electro-Motive Division hereby also agrees to execute the Bill of Sale contained herein as an exhibit, immediately on receipt of the payment provided in Article 1 Section 1.1.

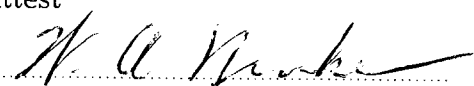
General Motors Corporation
Electro-Motive Division

By:  

Its: VICE PRESIDENT

Dated JUL 20 1971

Attest


ASSISTANT SECRETARY

GENERAL MOTORS CORPORATION
Electro-Motive Division

BILL OF SALE

GENERAL MOTORS CORPORATION, Electro-Motive Division (herein called "Builder"), in consideration of the sum of One Dollar (\$1.00) and other good and valuable consideration, receipt of which is hereby acknowledged, does hereby sell, assign, set over and transfer to MANUFACTURERS NATIONAL BANK OF DETROIT, a national banking association, (herein called "Bank", the designee of the Detroit, Toledo and Ironton Railroad Company to take title to the Locomotives hereinafter specified, manufactured by the Builder pursuant to its contract with said Railroad Company, evidenced by Builder's Proposals No. 70-L-9 and No. 70-L-7 dated December 15, 1970 (herein called "Contract")), and to the successors and assigns of said Bank, six (6) new 2,000 h.p. Model GP 38 AC Diesel Electric Freight Locomotives numbered 215-220, inclusive, and two (2) 2,000 h.p. Model SD38 Diesel Electric Freight Locomotives numbered 253 and 254, lettered "Manufacturers National Bank of Detroit — Owner", together with Builder's retention of title pursuant to the Contract specified in the Terms and Conditions of said Proposals; and the Builder hereby warrants to the Bank that on the date hereof the Builder had legal title to the above-described Locomotives and had good and lawful right to sell said Locomotives, and the title to said locomotives was free of all claims, liens and encumbrances of any nature whatsoever; and Builder further warrants to Bank the warranties contained in said Proposals to which reference is hereby made.

IN WITNESS WHEREOF, the Builder has caused its corporate seal to be hereto affixed, duly attested, and this instrument to be signed in its name by its
....., this
day of, 1971.

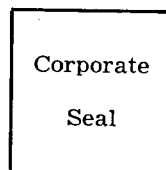
General Motors Corporation
(Electro-Motive Division)

By:

Its:

ATTEST:

.....



SCHEDULE OF PAYMENTS

attached under Conditional Sale Agreement No. 45 dated July 20, 1971, executed by Manufacturers National Bank of Detroit, as Vendor, and Detroit, Toledo and Ironton Railroad Company, a Delaware corporation, as Vendee:

No.	Date Due	Payment on a/c Principal	Interest @ 7 1/2 % for the Quarter	Total Quarterly Payment	Balance of Principal
					\$1,650,000.00
1.	10-15-71	\$27,500.00	\$30,937.50	\$58,437.50	\$1,622,500.00
2.	1-15-72	27,500.00	30,421.88	57,921.88	1,595,000.00
3.	4-15-72	27,500.00	29,906.25	57,406.25	1,567,500.00
4.	7-15-72	27,500.00	29,390.63	56,890.63	1,540,000.00
5.	10-15-72	27,500.00	28,875.00	56,375.00	1,512,500.00
6.	1-15-73	27,500.00	28,359.38	55,859.38	1,485,000.00
7.	4-15-73	27,500.00	27,843.75	55,343.75	1,457,500.00
8.	7-15-73	27,500.00	27,328.13	54,828.13	1,430,000.00
9.	10-15-73	27,500.00	26,812.50	54,312.50	1,402,500.00
10.	1-15-74	27,500.00	26,296.88	53,796.88	1,375,000.00
11.	4-15-74	27,500.00	25,781.25	53,281.25	1,347,500.00
12.	7-15-74	27,500.00	25,265.63	52,765.63	1,320,000.00
13.	10-15-74	27,500.00	24,750.00	52,250.00	1,292,500.00
14.	1-15-75	27,500.00	24,234.38	51,734.38	1,265,000.00
15.	4-15-75	27,500.00	23,718.75	51,218.75	1,237,500.00
16.	7-15-75	27,500.00	23,203.13	50,703.13	1,210,000.00
17.	10-15-75	27,500.00	22,687.50	50,187.50	1,182,500.00
18.	1-15-76	27,500.00	22,171.88	49,671.88	1,155,000.00
19.	4-15-76	27,500.00	21,656.25	49,156.25	1,127,500.00
20.	7-15-76	27,500.00	21,140.63	48,640.63	1,100,000.00
21.	10-15-76	27,500.00	20,625.00	48,125.00	1,072,500.00
22.	1-15-77	27,500.00	20,109.38	47,609.38	1,045,000.00
23.	4-15-77	27,500.00	19,593.75	47,093.75	1,017,500.00
24.	7-15-77	27,500.00	19,078.13	46,578.13	990,000.00
25.	10-15-77	27,500.00	18,562.50	46,062.50	962,500.00
26.	1-15-78	27,500.00	18,046.88	45,546.88	935,000.00
27.	4-15-78	27,500.00	17,531.25	45,031.25	907,500.00
28.	7-15-78	27,500.00	17,015.63	44,515.63	880,000.00
29.	10-15-78	27,500.00	16,500.00	44,000.00	852,500.00
30.	1-15-79	27,500.00	15,984.38	43,484.38	825,000.00
31.	4-15-79	27,500.00	15,468.75	42,968.75	797,500.00
32.	7-15-79	27,500.00	14,953.13	42,453.13	770,000.00
33.	10-15-79	27,500.00	14,437.50	41,937.50	742,500.00
34.	1-15-80	27,500.00	13,921.88	41,421.88	715,000.00
35.	4-15-80	27,500.00	13,406.25	40,906.25	687,500.00
36.	7-15-80	27,500.00	12,890.63	40,390.63	660,000.00
37.	10-15-80	27,500.00	12,375.00	39,875.00	632,500.00
38.	1-15-81	27,500.00	11,859.38	39,359.38	605,000.00
39.	4-15-81	27,500.00	11,343.75	38,843.75	577,500.00

No.	Date Due	Payment on a/c Principal	Interest @ 7½ % for the Quarter	Total Quarterly Payment	Balance of Principal
40.	7-15-81	27,500.00	10,828.13	38,328.13	550,000.00
41.	10-15-81	27,500.00	10,312.50	37,812.50	522,500.00
42.	1-15-82	27,500.00	9,796.88	37,296.88	495,000.00
43.	4-15-82	27,500.00	9,281.25	36,781.25	467,500.00
44.	7-15-82	27,500.00	8,765.63	36,265.63	440,000.00
45.	10-15-82	27,500.00	8,250.00	35,750.00	412,500.00
46.	1-15-83	27,500.00	7,734.38	35,234.38	385,000.00
47.	4-15-83	27,500.00	7,218.75	34,718.75	357,500.00
48.	7-15-83	27,500.00	6,703.13	34,203.13	330,000.00
49.	10-15-83	27,500.00	6,187.50	33,687.50	302,500.00
50.	1-15-84	27,500.00	5,671.88	33,171.88	275,000.00
51.	4-15-84	27,500.00	5,156.25	32,656.25	247,500.00
52.	7-15-84	27,500.00	4,640.63	32,140.63	220,000.00
53.	10-15-84	27,500.00	4,125.00	31,625.00	192,500.00
54.	1-15-85	27,500.00	3,609.38	31,109.38	165,000.00
55.	4-15-85	27,500.00	3,093.75	30,593.75	137,500.00
56.	7-15-85	27,500.00	2,578.13	30,078.13	110,000.00
57.	10-15-85	27,500.00	2,062.50	29,562.50	82,500.00
58.	1-15-86	27,500.00	1,546.88	29,046.88	55,000.00
59.	4-15-86	27,500.00	1,031.25	28,531.25	27,500.00
60.	7-15-86	27,500.00	515.63	28,015.63	—0—
		<u>\$1,650,000.00</u>	<u>\$943,593.90</u>	<u>\$2,593,593.90</u>	